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STATE OF WEST VIRGINIA
DEPARTMENT OF REVENUE
ALCOHOL BEVERAGE CONTROL ADMINISTRATION

2020 APR 23 P 12:47

OFFICE WEST VIRGINIA
SECRETARY OF STATE

900 Pennsylvania Ave., 4th Floor
Charleston, West Virginia 25302

FREDRIC L. WOOTON
COMMISSIONER

DAVE HARDY
CABINET SECRETARY

April 23, 2020

VIA EMAIL to: mlewis@wvsos.com and dkersey@wvsos.com

Mac Warner, The Honorable Secretary of State,
Secretary of State's Office – Administrative Law
Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

Re: West Virginia Code of State Rules
– Administrative Notice for 176 CSR 1 §6.3.h.1.A.

Dear Secretary of State Warner:

The Honorable Governor of the State of West Virginia, Jim Justice, has declared a State of Emergency on March 16, 2020, to address the emergency created by the worldwide COVID-19 pandemic, or more commonly known as the novel coronavirus.

As declared in the State of Emergency Proclamation, the Governor, in accordance with emergency powers granted to the Governor pursuant to W. Va. Code §15-5-6, and more specifically §15-5-6(c)(7), and as also stated in Executive Order No. 2-20 issued on March 18, 2020,

“I hereby **DELEGATE** to all state agencies the ability to suspend rules, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency”

The West Virginia Alcohol Beverage Control Administration (WVABCA) at the direction of the Governor seeks to temporarily suspend a nonintoxicating beer rule that would hinder the ability of distributors to price certain nonintoxicating beer products that are subject to certain conditions set forth in West Code §47-11A-8, to avert loss to the wholesaler by spoilage or depreciation.

Based on the above conditions arising from COVID-19 and in the best interest of the public health, safety and welfare of West Virginia citizens, the Governor, per the State of Emergency and Executive Order 2-20, directed the WVABCA to temporarily suspend the West Virginia Code of State Rules at 176 CSR 1, specifically §6.3.h.1.A., in part, by editing the rule and providing for distributor price adjustments in certain conditions. The temporary suspension of this rule, as noted herein, shall be effective April 22, 2020, and shall endure for the remainder of the entire period of the State of Emergency, which was declared on March 16, 2020, and shall expire as noted below.

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The temporary rule suspension is accomplished by editing pricing timelines for beer distributors as specified in W. Va. Code R. § 176-1-6.3.h.1.A. by adding, after the last sentence of this rule, a new sentence to read as follows:

“Provided further, distributors are permitted to make price adjustments during the distributor's quarterly pricing period in accordance with W. Va. Code §47-11A-8, during the State of Emergency declared on March 16, 2020, upon 2 days' notice to the Commissioner, on a form provided by the Commissioner. Any such distributor price adjustment per W. Va. Code §47-11A-8 will be reviewed, and if approved shall expire at the end of the distributor's quarterly pricing period or until the price adjustment is refiled by the distributor upon 2 days' notice to return the quarterly price to the original price set for that quarterly pricing period since the W. Va. Code §47-11A-8 price adjustment reasons no longer apply.”

This rule suspension shall not relieve distributors of filing their quarterly pricing as required by the West Virginia Code and rules.

Distributors must still maintain written documentation of their W. Va. Code §47-11A-8 reasons for a price adjustment.

If you have any further questions, please feel free to contact the WVABCA at 304-356-5500 or toll free at 800-642-8202, or via email at the appropriate contact noted on the WVABCA's website (www.abca.wv.gov).

Sincerely,

/s/ Fredric L. Wooton, Commissioner

WVABCA
900 Pennsylvania Avenue, 4th Floor
Charleston, WV 25302